United Nations CAT/C/SR.1638

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
16 May 2018

Original: English

Committee against Torture
Sixty-third session

Summary record of the first part (public)* of the 1638th meeting
Held at the Palais Wilson, Geneva, on, Tuesday, 8 May 2018, at 3 p.m.

Chair: Mr. Modvig

Contents

Meeting with the Chair of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1638/Add.1.

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.

GE.18-07450 (E) 110518 160518

1807450

Please recycle

The meeting was called to order at 3 p.m.

Meeting with the Chair of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/63/4)

1. **Sir** Malcolm **Evans** (Chair of the Subcommittee on Prevention of Torture), introducing the Subcommittee's eleventh annual report (CAT/C/63/4), said that, in 2017, four States — Australia, Madagascar, Sri Lanka and the State of Palestine — had become parties to the Optional Protocol to the Convention against Torture. Afghanistan had also acceded to the instrument in early 2018, bringing the total number of States parties to the Optional Protocol to 88. Of those new States parties, Australia had made the declaration provided for under article 24 of the Optional Protocol, postponing for three years its obligation to establish a national preventive mechanism. In that connection, the Subcommittee had posted on its website a list of States parties whose compliance with the obligations under article 17 of the Optional Protocol — namely to establish a national preventive mechanism — was substantially overdue. The list, which currently contained 14 States parties, had proved to be a useful means of reminding States parties of their commitments. It was hoped that the Subcommittee would be able to remove one or more States parties from the list at its next session.

2. In terms of country visits, 2017 had been a particularly busy year. The Subcommittee had conducted 10 official visits, which was the maximum it could feasibly carry out with the resources it had available. Regrettably, the Committee had been forced to suspend one visit — to Rwanda — but had already announced its intention to resume the visit at the earliest opportunity. Other key areas of focus in 2017 had included working with long-established national preventive mechanisms, which were often in a precarious position owing to, among other issues, changes of leadership or the loss of experienced staff members, and finalizing and transmitting 14 reports to States parties and national preventive mechanisms. As part of its follow-up procedure, the Subcommittee had engaged in dialogues with States parties wherever possible. Indeed, thanks to support from the treaty body capacity-building programme of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Subcommittee had decided to enhance its post-visit dialogues with States parties and national preventive mechanisms by undertaking in situ discussions, with the aim of improving the understanding and implementation of the Subcommittee's recommendations. It was hoped that the Subcommittee would be able to extend that practice to other States parties in the future. There was also a growing need for more active engagement with national preventive mechanisms, which were increasingly requesting advice from the Subcommittee. At the current time, that engagement was largely ad hoc for want of a better structure and system to address their needs.

3. On a less positive note, budget constraints had forced the Subcommittee to reduce by 20 per cent the number of country visits envisaged for 2018. The situation was a matter of serious concern. Without greater human and financial resources, the Subcommittee would only be able to visit a State party once every 10 years, which was grossly out of line with the reporting periodicity of other treaty bodies. The issue had been compounded by the fact that the Subcommittee was unable to take advantage of the additional meeting time it had been granted in the absence of the attendant resources necessary to support its work. As a result, some aspects of the Subcommittee's work, such as essential background research, capacity-building and meetings with States parties, would have to be put on hold. Efforts were being made to find creative ways to make the best use of meeting time. Lastly, the Subcommittee was concerned that not all States parties fully appreciated the nature of its mandate and was having to spend a great deal of time explaining to them its right to visit the country and any places of deprivation of liberty at a time of its choosing. The Subcommittee wished to thank the Committee for its work in reminding States parties of their obligations and, in particular, for the assistance it had provided under the procedure established by article 16 (4) of the Optional Protocol, which had been used by the Subcommittee on one occasion in 2017.

4. **Mr. Hani** said that he wished to know what criteria the Subcommittee used in deciding whether a State party was "substantially overdue" in its obligations to establish a national preventive mechanism. Noting that 8 of the 14 States parties on the list of States

parties whose compliance with their obligations under article 17 of the Optional Protocol was at least three years overdue had attended a plenary meeting with the Subcommittee, he wondered whether the Subcommittee had given consideration to further categorization, such as identifying which of those States parties had made some or little progress towards establishing such a mechanism. He asked whether there was any update on the shortfall in the funding of the Special Fund of the Optional Protocol, as had been mentioned in the report, whether the 20 per cent reduction in the number of country visits conducted per year was likely to become the norm and whether the Subcommittee had any creative solutions to address the limited human and financial resources it was currently facing. Lastly, he would be interested to know more about the decision to merge the Subcommittee's working groups on procedural issues and on jurisprudence and thematic issues into a single working group.

5. **Ms. Racu** said she wished to know whether there had been any positive developments in terms of visiting places of detention in so-called states with de facto control over their territories, such as Abkhazia, Nagorno-Karabakh, South Ossetia and Transnistria. Those territories had long been considered black holes, with places of detention, psychiatric hospitals and social care homes that had never been entered by non-governmental organizations (NGOs) or international bodies. She wished to know whether that issue had ever been discussed by the Subcommittee in the past year. It would also be useful to learn whether the Subcommittee had considered undertaking advisory visits to national preventive mechanisms and, if so, in which countries, what guidelines and training were available for national preventive mechanisms and whether any new training materials or tools had been developed in 2017.

6. **Mr. Tuzmukhamedov**, referring to article 13 of the Optional Protocol, said that he wished to know how the size and make-up of a visiting delegation was arrived at, what the average size was and whether any States parties had ever rejected a proposed member of the delegation. He wondered whether a State party could refuse entry to a proposed visit site and, if so, on what grounds, whether the delegation enjoyed the freedom of movement necessary to complete its mission and the extent to which the Subcommittee visits were akin to "challenge inspections", which, in arms-control parlance, were conducted at short-notice and at any location of a State party.

7. **The Chair** said that he would be interested to know more about the outcome of the meeting held with States parties that had yet to establish a national preventive mechanism. In particular, he wondered if any trends or common denominators had emerged that the Committee could perhaps follow-up on in upcoming reviews with the States parties concerned.

8. **Sir** Malcolm **Evans** (Chair of the Subcommittee on Prevention of Torture) said that, under article 17 of the Optional Protocol, States parties were obliged to establish a national preventive mechanism within a year of becoming a party to the Optional Protocol, unless they had opted to make the declaration provided for under article 24, which allowed them to delay that obligation for a further three years. Taking into account the one-year requirement and the option to delay establishing a mechanism by an additional three years under article 24, States parties were deemed to be substantially overdue in meeting their obligations if they had failed to establish a national preventive mechanism within four years of becoming parties to the Optional Protocol. Once such a decision had been taken, the Subcommittee notified the State party in question, giving it the opportunity to clarify whether or not a national preventive mechanism had been established. In some cases, the State party had simply neglected to inform the Subcommittee of that fact. It should be pointed out that, although all that was required to meet the obligation under article 17 was to establish a national preventive mechanism, no judgment was made on the form it took, its effectiveness, completeness or utility. Removal from the article 17 list, however, required proof that the national preventive mechanism was not only extant but also functional. While it had been disappointing that not all the States parties on the list had attended the plenary meeting with the Subcommittee, information received suggested that those that had were now taking steps to remedy the situation. Regarding the Special Fund, although most donations were made at the end of the year, the fact that it was not getting the support it deserved was an ongoing challenge and a cause for concern.

9. The Subcommittee aspired to conduct 8 visits per year, though it was hoping to return to 10 in the future if the necessary funding could be secured. It was not prepared to compromise on the quality of its visits simply for the sake of carrying out more of them. Although the Subcommittee's size meant that plenary meetings were not always the optimal format for certain discussions, unlike in the past, the professional skills sets and language abilities of the current membership precluded it from dividing up naturally into working groups that could work without interpretation services, as working groups were required to do. However, curtailing the amount of time spent in working groups made it more difficult to complete the Subcommittee's work within a one-week session. Regarding the question raised about de facto states, the Subcommittee's mandate extended to all the parts of territories that fell under a State's jurisdiction and it would continue to seek to exercise its mandate in such areas after determining that it was appropriate and practical to do so.

10. The Subcommittee was delighted with the new training guide developed by the capacity-building team, which would complement the guidelines and self-assessment tool for national preventive mechanisms. That being said, the Subcommittee strived to strike a balance between providing the mechanisms with guidance and allowing them the time and leeway to focus on their tasks. It was very supportive of the peer-to-peer networks. The Subcommittee allocated time to the mechanism during all its visits and, where there was no functioning mechanism, it spoke to the Government to ascertain why.

11. A minimum of two Subcommittee members, in addition to secretariat staff and any necessary security personnel and interpreters, were required for a visit, though visits were typically carried out by four members for reasons of efficiency. Sometimes up to six members might go in order to cover a particularly large country or enable a new member to shadow someone more experienced. States could object to the participation of an invited expert but not of a Subcommittee member. The Subcommittee's visits to any given establishment were unannounced, which on occasion had caused some difficulties in access. However, under the Optional Protocol, a State could delay access for a limited period of time only in the event of a riot or serious disorder issues. As to the list of substantially non-compliant States, it would be extremely helpful if the Committee could raise the issue during its review of the States concerned. Naturally, the Subcommittee would welcome any information the Committee might glean through its reviews or any suggestions about what countries to visit.

12. **Mr. Hani** asked when the checklist for national preventive mechanisms and the medical resource tool mentioned in paragraph 44 of the annual report would be completed.

13. **Sir** Malcolm **Evans** (Chair of the Subcommittee on Prevention of Torture) said that documents of that nature tended to be developed internally before being tested during a few visits. They were made public once the Subcommittee was satisfied that they were finalized. The checklist was in the pilot phase.

The public part of the meeting rose at 3.55 p.m.